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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC. Dkt. No. 97-213
Communications Assistance)
for Law Enforcement Act) DA 98-762
)

Reply Comments

With these Reply Comments, the Ameritech Operating Companies¹ and Ameritech Mobile Communications, Inc. (collectively referred to as "Ameritech") respectfully respond to the comments file by the Department of Justice and the Federal Bureau of Investigation ("FBI") which argue that the Federal Communications Commission ("Commission") does not have the authority to grant a blanket extension of time for telecommunications carriers to comply with the capability requirements contained in Section 103 of the Communications Assistance for Law Enforcement Act (CALEA), (47 U.S.C. sec. 1002), pursuant to Section 107(c)(1) of CALEA. 47 U.S.C. sec. 1006. These Reply Comments will demonstrate not only that the Commission has the authority to grant a blanket extension of time, but that an extension is warranted because telecommunications carriers are incapable of complying with the assistance capability requirements of CALEA because there is no technology reasonably available which will allow them to comply. Consequently, Ameritech requests that the

¹ The Ameritech Operating Companies are local exchange carriers that operate in a five state region under the names of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio and Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.

Commission grant a blanket extension of time, at least until such time as assistance capability requirements are reasonably available.

At the outset, the FBI argues that the Commission does not have the authority to grant a blanket extension of time, because the language in Section 107(c) provides for "a telecommunications carrier" to make a request and limits the Commission to granting an extension to "that part of a carrier's business on which the new equipment, facility, or service is used." 47 U.S.C. sec. 1006(c). In this regard, the FBI argues that this language contemplates that the Commission look at each individual carrier and the carrier's equipment prior to granting an extension of time. Second, the FBI posits that even if the Commission considers granting extensions of time, the petitioners have not provided sufficient information to demonstrate that they cannot comply within the existing technology. Specifically, the FBI points out that the CALEA gives "carriers the freedom to chose whatever methods of compliance they prefer[red]" and that the industry has established a "safe harbor" with the J-STD-025 standard. Thus, the FBI concludes, the industry should be required to comply with the current "safe harbor" until the Commission establishes a new safe harbor after completing its review of the technical deficiency petitions. Finally, the FBI argues that the Commission need not concern itself with an extension process because the FBI itself will enter into forbearance agreements with manufacturers and carriers to ensure that these carriers and manufacturers will not be unfairly prosecuted for not complying with CALEA by October 25, 1998.

Ameritech strongly disagrees with the FBI's arguments. First, the FBI provides no legislative history or Congressional intent supporting its interpretation of Section

107(c) that the Commission cannot grant blanket extensions. And without clearly stated legislative intent, the rules of statutory interpretation require that the Commission interpret the language of Section 107(c) in a reasonable manner and not in isolation.² Specifically, the courts have said

To disregard the natural implications of the statute and to imprison our reading of it in the shell of mere words is to commit the cardinal sin in statutory construction, blind literalness.

In re Persico, 522 F.2d 41, 64 (8th Cir. 1975)(citing *Pope v. Atlantic Coast Line R. Co.*, 345 U.S. 379, 392, 97 L. Ed. 1094 (1953)(Frankfurter, J. concurring). While Section 107(a) allows for a single telecommunications carrier to request an extension of time, Section 107(c)(2) does not prohibit the Commission from granting extensions to more than one carrier at a time. Clearly, the Commission has the authority to interpret Section 107(c) in a reasonable manner considering all the relevant facts and circumstances. Thus, if the Commission finds that the facts provided by one telecommunications carrier supporting an extension of time applies equally to all telecommunications carriers, then in the interests of administrative ease and efficiency, the Commission has the authority to grant a blanket extension of time.

Consequently, the Commission must consider all the facts surrounding the request for an extension of time to determine whether they meet the criteria under which the Commission can grant an extension under Section 107(c). As noted in Ameritech's Comments, the Commission should grant an extension of time if: 1) technology

² "The words of a statute are not to be read in isolation; statutory interpretation is a 'holistic endeavor'" See *United Sav. Assn. Of Tex. V. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371, 98 L. Ed. 2d 740 (1988).

necessary to comply with the capability assistance requirements is not reasonably available; and 2) technology will not be available within the time period for compliance. And, in the Petitions for Extension of Time, several parties have demonstrated that no manufacturer has developed technology that will comply with CALEA and such technology will not be available by October 25, 1998. In fact, not only do the FBI's Comments in this proceeding not challenge this fact, the FBI's Report provided to Congress on January 26, 1998 supports it.

Furthermore, when the FBI argued that the J-STD-025 Interim Standard ("Standard") is available for carriers to use to comply with CALEA, it ignored the fact that the Standard was only passed November 20, 1997, which is without question too late for the technology to be developed and implemented by October 25, 1998. Moreover, the FBI fails to acknowledge that it was instrumental in fighting the passage of the Standard and successfully ensured that only an interim Standard was adopted not a final one. Consequently, given the FBI's involvement in this standards process, the FBI cannot reasonably insist that the industry be held to the October 25, 1998.

Finally, the Commission should disregard the FBI's assurances that an extension of time is not necessary because the FBI is negotiating "forbearance agreements" with the telecommunications carriers. And, the Commission should not grant credibility to the FBI's overstated argument that

The grant of an industry-wide extension would be ... disastrous from the perspective of law enforcement's ability to protect the public from criminal activity, particularly in the areas of organized crime, drug trafficking, violent crime, and domestic terrorism.

Despite the FBI's arguments, carriers will continue to provide law enforcement with the ability to intercept telephone calls for targeted numbers, and the grant of an extension of time will not change that fact.³ Moreover, given the language of Sections 107 and 109, the Commission has the statutory responsibility to act on the requests for extensions of time. And, if the criteria required for the granting the extension is met, the Commission has the obligation to grant it. Further, the FBI's forbearance position is really an attempt to undermine the balance that was established within the CALEA statute. Specifically, under the forbearance process the FBI would usurp the Commission's authority under Section 107(b) to resolve disputes as to the technical requirements of CALEA. The FBI is only willing to grant forbearance to those carriers and manufacturers that agree to provide certain technical capabilities, which are currently a matter of substantial disagreement between the industry and the FBI. Thus, under this forbearance process, the FBI would have the ability to force the manufacturers and industry to provide those features that the FBI deems is required by CALEA, regardless of the Commission's decisions on those issues.⁴

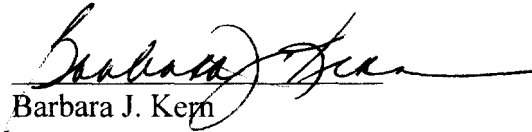
Based on the foregoing, the Commission should disregard the FBI's comments and grant a blanket extension of time to telecommunications carriers. The blanket

³ Interestingly, the FBI has stated that it would not use the CALEA type intercept in all cases but would continue to use the current method of wiretapping. See FBI's Comments, In the Matter of the Communications Assistance for Law Enforcement Act, CC Dkt. No. 97-213, filed December 12, 1997, at note 22.

⁴ In addition, the forbearance process gives the FBI the ability to require substantial concessions from the industry that are not necessarily consist with the requirements of CALEA. For example, the FBI could require substantial monetary penalties for such things as delays, record keeping problems, or implementation requirements

extension should last until such time as the carriers will reasonably be able to install and deploy a complete CALEA solution.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Barbara J. Kern", is written over a horizontal line.

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May 14, 1998

CERTIFICATE OF SERVICE

I, Beth Horsman, hereby certify that I have on this 15th day of May, 1998, caused to be served by first class mail, postage prepaid, or by hand delivery, a copy of the foregoing

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